

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
NO. 2:17-CV-00004-FL**

**SAVE OUR SOUND OBX, INC., THOMAS
ASCHMONEIT, RICHARD AYELLA, DAVID
HADLEY, MARK HAINES, JER MEHTA, and
GLENN STEVENS,**

Plaintiffs,

v.

**NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION, JAMES H. TROGDON,
III, in his official capacity as Secretary of the
North Carolina Department of Transportation,
FEDERAL HIGHWAY ADMINISTRATION,
and JOHN F. SULLIVAN, III, in his official
capacity as Division Administrator for the
Federal Highway Administration,**

Defendants,

and

**DEFENDERS OF WILDLIFE and NATIONAL
WILDLIFE REFUGE ASSOCIATION,**

Defendant-Intervenors.

**ORDER ON BRIEFING
SCHEDULE**

On October 30, 2017, Plaintiffs Save Our Sound OBX, Inc., Thomas Aschmoneit, Richard Ayella, David Hadley, Mark Haines, Jer Mehta, and Glenn Stevens; Defendants, the North Carolina Department of Transportation, James H. Trogdon, III, in his official capacity as Secretary of NCDOT (together the “State Defendants”); and the Federal Highway Administration, and John F. Sullivan, III, in his official capacity as Division Administrator for FHWA (together the “Federal Defendants”); and Defendant-Intervenors Defenders of Wildlife and the National

Wildlife Refuge Association (collectively “the Parties”) submitted a Joint Motion on Briefing Schedule (the “Motion”), requesting that the Court enter an amended scheduling order. After considering the Parties’ Motion, the Court finds that the requested schedule is reasonable in part,¹ and therefore, **IT IS HEREBY ORDERED** that:

1. The case shall be governed by the following schedule:
 - a. Defendants and Defendant-Intervenors will file any Responses to Plaintiffs’ Motion to Amend the Complaint, ECF No. 78, by November 16, 2017.
 - b. Plaintiffs may file a Reply regarding their Motion to Amend the Complaint by November 30, 2017.
 - c. If the Court grants Plaintiffs’ Motion to Amend Complaint, ECF No. 78:
 - i. Within 14 days, Federal Defendants, State Defendants, and Defendant-Intervenors will file any responsive pleadings.
 - ii. Within 21 days after Defendants and Defendant-Intervenors file an amended answer or the resolution of any other responsive pleadings, whichever is later, Plaintiffs will file a Motion for Summary Judgment and accompanying memorandum, not to exceed 50 pages.
 - iii. Within 21 days after Plaintiffs file a Motion for Summary Judgment, Federal Defendants and State Defendants will file their respective Cross-Motions for Summary Judgment and Responses in Opposition to Plaintiffs’ Motion for Summary Judgment, and accompanying memoranda, not to exceed 50 pages each. Defendant-Intervenors Defenders of Wildlife and National Wildlife Refuge Association may also


1. Where the court, at the parties' request, (DE 41), earlier structured the briefing schedule to promote decision on the merits and allowed stay of the court's standard deadlines for briefing on plaintiffs' motion for preliminary injunction with understanding that decision on that motion would likely prove unnecessary under the case management schedule as proposed, (DE 43), an accelerated briefing schedule for purposes of the pending motion to amend, (DE 78), and anticipated cross-motions for summary judgment is appropriate to consummate the purposes of case management thus far and to satisfy shared expectations.

jointly file a Motion for Summary Judgment and accompanying memorandum, not to exceed 50 pages.

- iv. Within 21 days after Defendants and Defendant-Intervenors file their Cross-Motions for Summary Judgment, Plaintiffs may file a Reply Memorandum in support of their Motion for Summary Judgment and Response in Opposition to Defendants' and Defendant-Intervenors' Motions for Summary Judgment, not to exceed 50 pages.
 - v. Within 14 days after Plaintiffs' Reply Memorandum, Federal Defendants and State Defendants may file Reply Memoranda in support of their respective Motions for Summary Judgment, not to exceed 25 pages each. Defendant-Intervenors may also jointly file a Reply Memorandum, not to exceed 25 pages.
- d. If the Court denies Plaintiffs' Motion to Amend Complaint, ECF No. 78:
- i. Within 21 days, Plaintiffs will file a Motion for Summary Judgment and accompanying memorandum, not to exceed 50 pages.
 - ii. Within 21 days after Plaintiffs file a Motion for Summary Judgment, Federal Defendants and State Defendants will file their respective Cross-Motions for Summary Judgment and Responses in Opposition to Plaintiffs' Motion for Summary Judgment, and accompanying memoranda, not to exceed 50 pages each. Defendant-Intervenors Defenders of Wildlife and National Wildlife Refuge Association may also jointly file a Motion for Summary Judgment and accompanying memorandum, not to exceed 50 pages.

- iii. Within 21 days after Defendants and Defendant-Intervenors file their Cross-Motions for Summary Judgment, Plaintiffs may file a Reply Memorandum in support of their Motion for Summary Judgment and Response in Opposition to Defendants' and Defendant-Intervenors' Motions for Summary Judgment, not to exceed 50 pages.
- iv. Within 14 days after Plaintiffs' Reply Memorandum, Federal Defendants and State Defendants may file Reply Memoranda in support of their respective Motions for Summary Judgment, not to exceed 25 pages each. Defendant-Intervenors may also jointly file a Reply Memorandum, not to exceed 25 pages.
- e. With the exception of discrete geotechnical borings and a discrete and temporary pile test program, State Defendants have advised Plaintiffs that ground-disturbing activities are not likely to begin prior to March 2018. In light of this advisement, Defendants agree to provide notice to Plaintiffs no less than 45 days before the commencement of any ground-disturbing activities other than the discrete geotechnical borings or the discrete and temporary pile test program.

Ordered this 3rd day of November, 2017.



The Honorable Louise W. Flanagan
United States District Judge